

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

HORTON HOMES, INC.,

Plaintiff,

v.

LARUE BANDY, MARIE BANDY,
PATRICK PRITCHETT, WILLIAM
SHANER, ELSIE FONDREN
AVERETTE, WILLIAM CRUTHIRDS,
SHERRIE CRUTHIRDS, LARRY C.
McCULLOUGH, and ROBERT
JEROME TEAL, III,

Defendants.

CIVIL ACTION NO.
2:07-CV-506-MEF

**PLAINTIFF HORTON HOMES, INC.'S SUPPLEMENTAL MOTION FOR
PROTECTIVE ORDER PROHIBITING DISCOVERY ABOUT NON-
PARTY ENTITIES NOT THE SUBJECT OF CLAIMS OR DEFENSES**

COMES NOW Plaintiff Horton Homes, Inc. ("Plaintiff Horton") and files this its "Supplemental Motion for Protective Order Prohibiting Discovery About Non-Party Entities Not the Subject of Claims or Defenses" ("Plaintiff Horton's Supplemental Motion for Protective Order") and shows the Court as follows:

1.

On July 1, 2008, Plaintiff Horton filed "Plaintiff Horton Home, Inc.'s Motion for Protective Order Prohibiting Discovery About Non-Party Entities Not the Subject of Claims or Defenses" ("Plaintiff Horton's Motion for Protective Order")

[Doc. #74] and supporting Brief (the "Supporting Brief") [Doc. #75], which Motion and Brief and Horton incorporates herein by reference.

2.

Plaintiff Horton's Motion for Protective Order seeks "a Protective Order precluding Defendants from using discovery to complicate this case and harass and unduly burden Plaintiff Horton by seeking discovery about non-parties Triangle Homes, LLC, Horton Industries, Inc., Horton Ironworks, Inc., and other entities irrelevant to this action". (Plaintiff Horton's Motion for Protective Order, p. 11.)

3.

As explained in Plaintiff Horton's Motion for Protective Order and in the Supporting Brief, the scope of discovery in this action is limited to matters relevant to the actual claims and defenses asserted by the parties, pursuant to Fed. R. Civ. P. 26(b)(1). Plaintiff Horton filed this action to prevent Defendants from attempting to make Plaintiff Horton subject to arbitration agreements that Defendants entered into with only H&S Homes, LLC ("H&S Homes"). (*Id.*, ¶ 5; Supporting Brief, p. 5.) In response, Defendants have asserted only that Plaintiff Horton is subject to these arbitration agreements as the alter ego of H&S Homes. (Plaintiff's Motion for Protective Order, ¶ 6; Supporting Brief, pp. 5-6.) Therefore, pursuant to Fed. R. Civ. P. 26(b)(1), the scope of discovery in this action is limited to Defendants, Plaintiff Horton, and H&S Homes.

4.

Despite the narrow and succinct scope of discovery in this action, Defendants are attempting to harass Plaintiff Horton by seeking discovery about irrelevant, non-party entities that are not the subject of claims or defenses in this action, including Triangle Homes, LLC, Horton Industries, Inc., and Horton Ironworks, Inc. (Plaintiff Horton's Motion for Protective Order, ¶¶ 13-19; Supporting Brief, pp. 8-11.)

5.

Since the filing of Plaintiff Horton's Motion for Protective Order on July 1, 2008, Defendants have further demonstrated their intent to exceed the scope of discovery by seeking information about non-party Triangle Homes, LLC. Specifically, on July 8, 2008, Defendants served Plaintiff Horton's counsel with their "Notice of Taking Videotape Deposition of Knowledgeable Corporate Representative" of Triangle Homes, LLC (the "Triangle Homes Deposition Notice"), a copy of which is attached hereto as Exhibit "A". In this Notice, Defendants are attempting to notice a deposition of Triangle Homes, LLC about the following enumerated matters:

1. The formation of Triangle Homes, LLC and its three (3) subsidiaries;
2. The initial capitalization of Triangle Homes, LLC and its three (3) subsidiaries;

3. The acquisition of assets and lot locations previously owned by H&S Homes, LLC, and subsequently owned by Triangle Homes, LLC and any of its subsidiaries;

4. The identification of officers, members and stockholders of Triangle Homes, LLC and its subsidiaries since its inception.

(Triangle Homes Deposition Notice (Exhibit "A"), pp. 1-2.)

6.

As with Defendants' other efforts to obtain discovery about non-party entities, the Triangle Homes Deposition Notice seeks information which is not the subject of any claims or defenses and is outside the scope of discovery as limited by Fed. R. Civ. P. 26(b)(1). Attempts to discover this information unnecessarily complicates this litigation, is burdensome and harassing, and subjects Plaintiff Horton and non-parties to unnecessary trouble and expense.

WHEREFORE, Plaintiff Horton prays:

1. That its Supplemental Motion for Protective Order be granted;
2. That this Court enter an order precluding Defendants from proceeding with the deposition noticed in the Triangle Homes Deposition Notice;
and
3. That the Court grant such other and further relief as is just and proper.

Dated this 14th day of July, 2008.

By: /s/ Jimmy L. Paul

JIMMY L. PAUL

Georgia Bar No. 567600

THOMAS C. GRANT

Georgia Bar No. 297455

(Admitted Pro Hac Vice)

Chamberlain, Hrdlicka, White, Williams & Martin

191 Peachtree Street, N.E., 34th Floor

Atlanta, Georgia 30303

(404) 659-1410

(404) 659-1852 (Facsimile)

james.paul@chamberlainlaw.com

SYDNEY F. FRAZIER

SJIS #FRA007

Cabaniss, Johnston, Gardner, Dumas & O'Neal, LLP

2001 Park Place North, Suite 700

Birmingham, Alabama 35203

(205) 716-5291

(205) 716-5389 (Facsimile)

sff@cabaniss.com

Co-Counsel for Plaintiff Horton Homes, Inc.

EXHIBIT "A"

**NOTICE OF TAKING VIDEOTAPE DEPOSITION OF A
KNOWLEDGEABLE CORPORATE REPRESENTATIVE**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

HORTON HOMES, INC.,

Plaintiff,

V.

CIVIL ACTION NO. 2:07-cv-506-MEF

**LARUE BANDY, MARIE BANDY,
PATRICK PRITCHETT, WILLIAM
SHANER, ELSIE FONDREN
AVERETTE, WILLIAM CRUTHIRDS,
and SHERRIE CRUTHIRDS,**

Defendants.

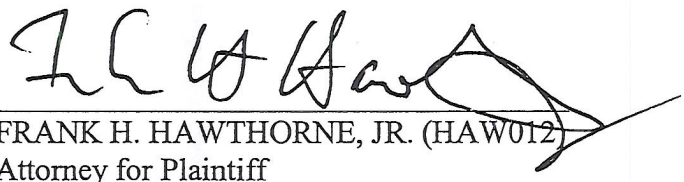
NOTICE OF TAKING VIDEOTAPE DEPOSITION OF
A KNOWLEDGEABLE CORPORATE REPRESENTATIVE

Please take notice that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Defendants' attorney shall take the videotape deposition or oral examination of a knowledgeable corporate representative of TRIANGLE HOMES, LLC, at the law offices of Hall, Bloch, Garland & Meyer, L.L.P., 1500 Fickling & Company Building, 577 Mulberry Street, Macon, Georgia, 31208 on the 22nd day of July, 2008 beginning at 10:30 o'clock a.m., EDT, and continuing from day to day thereafter excluding Saturdays, Sundays and Holidays until completed. Said representative shall be examined regarding all matters relating to the following items:

1. The formation of Triangle Homes, LLC and its three (3) subsidiaries;

2. The initial capitalization of Triangle Homes, LLC and its three (3) subsidiaries;
3. The acquisition of assets and lot locations previously owned by H&S Homes, LLC, and subsequently owned by Triangle Homes, LLC and any of its subsidiaries;
4. The identification of officers, members and stockholders of Triangle Homes, LLC and its subsidiaries since its inception.

In addition to the topics described above, the deponent may be questioned on other issues or matters permitted by Rule 30 of the Federal Rules of Civil Procedure. The above designated paragraphs are not intended to limit the questions which may be asked of the deponent or the testimony which may be given by the deponent. Instead, the above numbered paragraphs are for the purposes of more specifically describing, without limitation, the topics upon which the deponent may be asked to testify. During the course of any deposition, the deponent may be asked to testify to matters not herein more specifically described. The above and foregoing paragraphs are not for the purposes of in any way limiting testimony which the deponent may be asked to give.


FRANK H. HAWTHORNE, JR. (HAW012)
Attorney for Plaintiff

OF COUNSEL:

Frank H. Hawthorne, Jr.
Randy A. Myers
Hawthorne & Myers, L.L.C.
322 Alabama Street
Montgomery, Alabama 36104
Telephone: 334-269-5010

OF COUNSEL:

Michael S. Harper
213 Barnett Boulevard
Post Office Box 780608
Tallahassee, Alabama 36078
Telephone: 334-283-6855

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon counsel of record by U.S. Mail and facsimile this 8th day of July, 2008.

Sydney F. Frazier, Jr., Esq.
Cabaniss, Johnston, Gardner, Dumas & O'Neal, LLP
2001 Park Place North, Suite 700
Birmingham, AL 35203
FAX 305-716-5389

James L. Paul, Esq.
Thomas C. Grant, Esq.
Chamberlain, Hrdlicka, White, Williams & Martin
191 Peachtree Street Northeast Thirty-Fourth Floor
Atlanta, GA 3030


OF COUNSEL

CERTIFICATE OF SERVICE

This is to certify that on this date the undersigned has filed using the CM/ECF system a true and correct copy of "Plaintiff Horton Homes, Inc.'s Supplemental Motion for Protective Order Prohibiting Discovery About Non-Party Entities Not the Subject of Claims or Defenses" on the following parties and has served the following via the CM/ECF system:

Michael S. Harper
213 Barnett Boulevard
P.O. Box 780608
Tallasse, Alabama 36078

Frank H. Hawthorne, Jr.
Randy A. Myers
Hawthorne & Myers LLC
322 Alabama Street
Montgomery, Alabama 36104

Dated this 14th day of July, 2008.

By: /s/ Jimmy L. Paul

JIMMY L. PAUL
Georgia Bar No. 567600
THOMAS C. GRANT
Georgia Bar No. 297455
(Admitted Pro Hac Vice)

Co-Counsel for Plaintiff Horton Homes, Inc.

Chamberlain, Hrdlicka, White, Williams & Martin
191 Peachtree Street, N.E., 34th Floor
Atlanta, Georgia 30303
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